Supreme Court, U. S.
FILED
OCT 20 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-25

BERNADINE ROSE BROKENLEG,

Petitioner,

v.

BERNARD C. BUTTS, SR., *et ux.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS OF
THE STATE OF TEXAS, EL PASO, TEXAS

SUPPLEMENTAL BRIEF OF PETITIONER

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Petitioner, Bernadine Rose Brokenleg, respectfully submits this Supplemental Brief in order to call the Court's attention to new legislation.

On October 14, 1978, the Congress enacted S. 1214, the Indian Child Welfare Act of 1978. The President is expected to sign S. 1214 into law on or about November 1, 1978.[1] Under the provisions of S. 1214, the courts

[1] The legislative history of S. 9214 includes: H.R. Rept. No. 95-1386, 95th Cong., 2d Sess. (1978); S. Rept. No. 95-597, 95th Cong., 1st Sess. (1977); Indian Child Welfare Act of 1977, Hearing

[footnote continued]

below would not have been able to render their respective decisions. Section 101 of S. 1214 would divest state courts of jurisdiction in termination of parental rights and conservatorsship proceedings involving Indian children like Tiffany.[2] And, in the event that state courts retain jurisdiction over such proceedings, Section 102 of S. 1214 requires that (1) the placement of a child with a conservator must be based on "clear and convincing evidence . . . that the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child,"[3] and (2) termination of parental rights must be based on "evidence beyond a reasonable doubt . . . that the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child."[4]

Before the Select Committee on Indian Affairs, United States Senate, 95th Cong., 1st Sess. (1977); Task Force Four Report on Federal, State and Tribal Jurisdiction, Report to the American Indian Policy Review Commission, 94th Cong., 2d Sess. (1976); and Indian Child Welfare Program, Oversight Hearing Before the Subcommittee on Indian Affairs, United States Senate, 93d Cong., 2d Sess. (1974).

[2]Section 110 of S. 1214 divests courts of jurisdiction where the petitioner in a termination of parental rights or conservatorship proceeding involving an Indian child has improperly obtained the custody of an Indian child. This Section would become applicable to cases such as the one at bar.

[3]The evidence is that Tiffany was well cared for while in Petitioner's custody both on and off the Rosebud Sioux Indian Reservation. There is no evidence that Tiffany suffered physical or emotional damage of any kind at any time while in Petitioner's custody. Tiffany's current excellent physical and emotional health supports this evidence.

[4]The Section 102 termination of parental rights beyond a reasonable doubt standard could become applicable to Texas appointments of non-parent managing conservators. Under V.T.C.A. § 14.08, the appointment of a managing conservator can

[footnote continued]

Petitioner respectfully prays that this Court grant a writ of certiorari to the Court of Civil Appeals, El Paso, Texas.

Respectfully submitted,

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result in denying a parent access to a child. This result differs little from a *de jure* termination of parental rights. Thus, the Court of Civil Appeals decision may, in effect, terminate Petitioner's parental rights.